(c) Solicited and obtained agreements from member dealers not to engage in invoice advertising; and

(d) Agreed to urge its members not to do business with automobile brokers.

The complaint seeks relief that would prevent the NADA from continuing or renewing the alleged practices and agreements, or engaging in other practices or agreements that would have a similar purpose or effect.

On September 20, 1995, the United States and the NADA also filed a stipulation in which they consented to the entry of a proposed Final Judgment that would prohibit the NADA from engaging in certain anticompetitive practices, and would require the NADA to implement an antitrust compliance program. The proposed Final Judgment provides all of the relief that the United States seeks in the Complaint.

The United States and the NADA have agreed that the Court may enter the proposed Final Judgment after compliance with the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. 16 (b)–(h), provided the United States has not withdrawn its consent. Entry of the proposed Final Judgment will terminate the action, except that the Court will retain jurisdiction over the matter proceedings to construe, modify, or enforce the Final Judgment, or to punish violations of any of its provisions.

## II. Description of Practices Giving Rise to the Alleged Violation of the Antitrust Laws

The NADA is a national trade association, headquartered in McLean, Virginia, that represents approximately 84% of the franchised new car and truck dealers in the United States. Franchised dealers purchase new cars and trucks from manufacturers pursuant to franchise agreements, and in turn sell those cars and trucks and provide related services to consumers. The members of the NADA compete with each other and with other car and truck dealers to sell motor vehicles and other auto products and services to consumers. Dealers compete by offering different prices, quality of service, and selection of cars. NADA's members had retail sales of products and services of approximately \$375 billion in 1993.

## 1. Agreement Concerning Inventory

In recent years, automobile manufacturers have used certain sales and marketing practices designed to stimulate car sales, including fleet subsidies and consumer rebates. Fleet subsidies are discounts offered to purchasers of large quantities of cars, such as rental car companies and large corporations. These discounts can be larger than the discounts offered to franchised dealers. Fleet purchasers often resell fleet vehicles directly to the public or to non-franchised automobile dealers, who in turn sell them to the public. Prior to 1991, many fleet vehicles were sold in the same year as new cars of the same model year. Fleet vehicles, therefore, directly competed with new vehicle sales, but fleet cars were sometimes offered at prices thousands of dollars less than similar new cars. During the late 1980's and early 1990's, the NADA objected to manufacturers' practices of offering substantial fleet discounts. The NADA claimed that fleet subsidies created a class of vehicles that, because of their lower prices and mileage, unfairly increased competition with new vehicle sales.

The NADA also objected to manufacturers' use of consumer rebates to stimulate sales. Consumer rebates are cash incentives offered by manufacturers directly to consumers. In recent years, manufacturers have increased the amount and frequency of consumer rebates that they offered to entice consumers to purchase new automobiles. During the time period covered by the Complaint, many analysts estimated that consumer rebates saved consumers as much as \$1,000 per car. Many franchised dealers believe that when manufacturers offer rebates to consumers, franchised dealers are forced to offer their own rebates to consumers who purchase cars immediately before or after the rebate period. During the late 1980's and early 1990's, the NADA repeatedly urged manufacturers to give franchised dealers, rather than consumers, all discounts and incentives designed to stimulate sales.

In September, 1989, the NADA's president drafted a document entitled 'An Open Letter to All Dealers'' ("Open Letter''). The Open Letter claimed that manufacturers' use of fleet subsidies had contributed to automobile dealers' financial difficulties. It also discussed the NADA's attempts to convince consumer manufacturers not to offer rebates to consumes, and instead to give all incentives to dealers. The Open Letter concluded with a recommendation that all automobile dealers reduce their inventories to a 15-30 day supply of new vehicles. The letter then stated that the NADA would "advise dealers immediately of any movement by their franchisers which will assist dealers.'

Dealers customarily have substantially more than 15–30 days'

supply of new cars in inventory at any given time. Sixty to ninety days' supply is more typical. A dealer that unilaterally reduced its inventory by a substantial amount would risk losing sales to other dealers that maintain greater selection of cars. If dealers collectively reduced inventories, however, they could lower their inventory costs without losing sales to competing dealers. Such an action would adversely affect manufacturers, which would see a dramatic reduction in orders.

On October 23, 1989, the NADA president wrote a letter to Oregon dealers in which he called the Open Letter the NADA's "first response" to manufacturers who made little or no compromise with the NADA. The Open Letter was unanimously endorsed by the NADA's Executive Committee and board of directors and published in the October 30, 1989 issue of Automotive News as a two page advertisement. It was also published in the NADA's official publication, Automotive Executive, and sent to numerous representatives of the media and major automobile manufacturers.

At the NADA's 1990 Annual Convention, the NADA president claimed that the had been unable to obtain any concessions from manufacturers until after the Open Letter was published and dealers responded by cutting their new car orders. He further observed that: "Twenty-five thousand dealerships—doing anything more or less together—is bound to come to the attention of our suppliers."

The Complaint alleges that the Open Letter reflected an agreement by the NADA to reduce and maintain inventory levels equal to 15–30 day's supply unless and until automobile manufacturers adopted policies more favorable to dealers. An agreement by a trade association to recommend that all dealers maintain a particular inventory level is a *per se* violation of section 1 of the Sherman Act. An agreement by a trade association to boycott a supplier by encouraging its members to withhold or reduce orders is also a *per se* violation of the Sherman Act.

## 2. Agreement Concerning Advertising

Invoice advertising is advertising that reveals the dealer's invoice or cost to purchase a vehicle, or offers to sell the vehicle to the public at price based upon the dealer's invoice or cost to purchase the vehicle. The Complaint alleges that the NADA has frequently expressed its opposition to invoice advertising, at least in part because it believes that such advertising leads to